IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1249/2006
(Narendra Singh @ Mithu Singh & Ors. Vs. State of Rajasthan & Anr.)

Date of Order : 14/11/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Prithvi Raj Singh for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

This criminal misc. petition under Section 482 Cr.P.C. is directed against the order dated 30.8.2006 passed by Judicial Magistrate, Taranagar, Churu (for short 'the trial court' hereinafter) whereby the trial court took the cognizance of the offences under Sections 457 and 380 IPC and issued the process against the present petitioners.

I have heard learned counsel for the petitioners and public prosecutor for the State. Carefully gone through the order impugned.

It is contended by learned counsel for the petitioners that after investigation, the police filed a negative final report,

yet the trial court took the cognizance of the offences and issued the process against the petitioners. Learned counsel for the petitioners has also invited my attention to the statement of some of the witnesses recorded by the police who stated that they have neither seen the occurrence nor heard the same as also stated that the complainant is trading in illicit liquor. There are statements of witnesses including the complainant, his brother Bhadar Singh and one Fateh Singh. There are also statements of some of the witnesses before whom the complainant soon after the occurrence stated that such occurrence took place. The trial court on the basis of the statements of witnesses came to the conclusion that there is ground to proceed against the present petitioners and accordingly took the cognizance and issued the process. Regarding the statements of witnesses who stated that they have neither seen the occurrence nor heard the same, it is not necessary that every person would see the occurrence, the occurrence took place in the night at 11.00 P.M. and therefore, it cannot be said that every person of the village would witness the occurrence. Learned counsel has relied on decision of Hon'ble Supreme Court in Suresh Vs. Mahadevappa Shivappa Danannava & Anr. 2005 Cr.L.R. (SC) 295 wherein Hon'ble Supreme Court in a matter of dispute of civil nature involving the question of breach of agreement, on filing the negative final report by the

police, the Magistrate took the cognizance of the offence, set aside the order on the ground that Magistrate has not considered the negative final report filed by the police more particularly when there is specific allegation of breach of agreement and dispute is of civil nature. Learned counsel has also relied on a decision of this Court in Gopal Sharma & Ors. Vs. State of Rajasthan & Anr. 2005 (2) Cr.L.R. (Raj.) 1687 wherein this Court held that when the investigation culminates into a final report, the Court has to scrutinize the final report by applying its judicial mind, take decision whether to accept or reject the same, and while taking cognizance after the statements are recorded under Sections 200 & 202 Cr.P.C., the Court has to consider the final report as well as the investigation done by the police to determine whether cognizance on the basis of complaint can be taken or not.

In the instant case, from the perusal of the order impugned, it is clear that the trial court has considered each and every material available on record including the statements of eye witnesses who witnessed the occurrence and came to the conclusion that there is prima-facie ground to proceed against the present petitioners.

In Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, Hon'ble Supreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient

ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The Apex Court further held that investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

Keeping in view the decision of Hon'ble Supreme Court in Jagdish Ram Vs. State of Rajasthan (supra) as also the decision cited by learned counsel for the petitiner in Suresh Vs. Mahadevappa Shivappa Danannava & Anr. (Supra), it cannot be said that the trial court has not considered the FR given by the police, on the contrary, the FR was perused and from the FR papers, the trial court came to the conclusion that prima-facie there is ground to proceed against the present petitioners and accordingly took the cognizance. The order taking cognizance and issuing process in any manner cannot be said to be erroneous. It cannot be said that the order impugned would

result in serious miscarriage of justice or abuse of process of any Court warranting interference in the inherent jurisdiction.

The petition has no force and it is, therefore, dismissed.

(H.R.PANWAR),J.

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